

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAROL MORSE, BECKY NELLOS,
SANDY MOROWITZ, and
other similarly-situated individuals,

Plaintiffs,

-against-

ALPINE ACCESS, INC., and
SYKES ENTERPRISES, INC.,
Jointly and Severally as,

Defendants.

Index No. 5:17-CV-235[BKS/ATB]

ORDER DISMISSING
WITH PREJUDICE OPT-IN
PLAINTIFF JUSTIN FREY'S CLAIMS
UNDER THE FAIR LABOR
STANDARDS ACT

WHEREAS, on August 29, 2017, Magistrate Judge Andrew T. Baxter so-ordered the Parties' Stipulation Regarding Protocol for Dismissal of Plaintiffs with Prejudice for Failure to Respond to Discovery ("Dismissal Protocol") (DKT 52); and,

WHEREAS, on April 18, 2017, Opt-in Plaintiff Justin Frey ("Plaintiff Frey") filed with the Court a Consent to Join this Fair Labor Standards Act ("FLSA") case (DKT 26-1); and,

WHEREAS, on July 3, 2017, Defendants served upon Plaintiff Frey requests for written discovery, including Defendants' Requests for the Production of Documents and Defendants' First Set of Interrogatories, which responses and objections were due on or before August 2, 2017; and,

WHEREAS, Plaintiff Frey failed to respond to Defendants' requests for written discovery on or before August 2, 2017; and,

WHEREAS, pursuant to the Dismissal Protocol, Plaintiffs' counsel on September 5, 2017 informed Defendants' counsel that Plaintiffs' counsel on September 1, 2017 sent to Plaintiff Frey a letter informing Plaintiff Frey that (1) he failed to respond to Defendants' requests for written discovery; (2) he is obligated to engage in discovery as part of his obligations as an opt-

in Plaintiff; and (3) he has thirty (30) days from the date of such correspondence, or until October 2, 2017, to respond to Defendants' requests for written discovery, the failure of which may result in the dismissal with prejudice of Plaintiff Frey's FLSA claims; and,

WHEREAS, Plaintiff Frey has failed to respond or object to Defendants' requests for written discovery within thirty (30) days of the date of the correspondence from Plaintiffs' counsel; and,

WHEREAS, the Parties have not agreed to an extension of Plaintiff Frey's time to respond to Defendants' request for written discovery;

IT IS HEREBY ORDERED, that the Fair Labor Standards Act claims of Opt-in Plaintiff Justin Frey in the above-captioned action be dismissed in their entirety, with prejudice, pursuant to the Parties' agreed-upon Dismissal Protocol (DKT 52), and without costs, disbursements or attorneys' fees to any party.

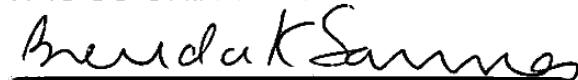
Dated: August 2, 2017

LITTLER MENDELSON, P.C.

By: /s Andrew J. Voss
Andrew J. Voss (admitted *pro hac vice*)
80 South 8th Street
Suite 1300
Minneapolis, MN 55402
612.630.1000 (office)

Attorneys for Defendants

IT IS SO ORDERED:



Brenda K. Sannes
U.S. District Judge

Dated: 11/9/2017
Syracuse, NY